

Taney excerpt from *Ex Parte Merryman*

Ex Parte Merryman, 17 F. Cas. 144 (1861)
(Excerpts from the majority opinion of Chief Justice Roger Taney.)

(The same issues that are addressed in Ex Parte Merryman are addressed in Ex Parte Milligan, which is a case involving a man from Huntington, Indiana. Feel free to substitute Ex Parte Milligan for Ex Parte Merryman.)

....The only power, therefore, which the president possesses, where the 'life, liberty or property' of a private citizen is concerned, is the power and duty prescribed in the third section of the second article, which requires 'that he shall take care that the laws shall be faithfully executed.' He is not authorized to execute them himself, or through agents or officers, civil or military, appointed by himself, but he is to take care that they be faithfully carried into execution, as they are expounded and adjudged by the coordinate branch of the government to which that duty is assigned by the constitution. It is thus made his duty to come in aid of the judicial authority, if it shall be resisted by a force too strong to be overcome without the assistance of the executive arm; but in exercising this power he acts in subordination to judicial authority, assisting it to execute its process and enforce its judgments. With such provisions in the constitution, expressed in language too clear to be misunderstood by any one, I can see no ground whatever for supposing that the president, in any emergency, or in any state of things, can authorize the suspension of the privileges of the writ of habeas corpus, or the arrest of a citizen, except in aid of the judicial power. He certainly does not faithfully execute the laws, if he takes upon himself legislative power, by suspending the writ of habeas corpus, and the judicial power also, by arresting and imprisoning a person without due process of law.

Nor can any argument be drawn from the nature of sovereignty, or the necessity of government, for self-defense in times of tumult and danger. The government of the United States is one of delegated and limited powers; it derives its existence and authority altogether from the constitution, and neither of its branches, executive, legislative or judicial, can exercise any of the powers of government beyond those specified and granted; for the tenth article of the amendments to the constitution, in express terms, provides that 'the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people.'...

Highlight passages of the text above that answer the following questions:

1. What role does the Constitution play in determining governmental power and the rights of U.S. citizens?
2. If Congress isn't in session, should the president be able to expand his or her constitutional role in order to pass a law intended to meet the needs of a national emergency?
3. Does the president's role as Commander-in-Chief give him or her special powers in times of war that override normal constitutional restraints on the presidency?